

REMARKS

Applicant has amended the above-identified application corresponding to the contemporaneously filed Request for Continued Examination, and in further response to the final Office Action dated January 18, 2006, issued in the preceding application.

Applicant has further amended each of independent claims 1, 23 and 62. New claims 86-97, directed to a method of pasteurizing an in-shell egg, have also been added. Accordingly, claims 1-37, 62-73 and 86-97 remain pending.

Applicant has responded to the Examiner's rejections set forth on pages 2-3, paragraphs 1-2, by amending each of the independent claims to recite that the discrete quantities of microwave energy, rather than alleged to be "separately" applied to the yolk and albumen, respectively, of the in-shell egg, are "predominantly" applied or directed to each of the yolk and albumen in succession. It is conceded that, as a practical technical impossibility, the ability to apply such quantities of microwave energy in a completely isolated and individualized fashion. However, and as is supported by the present disclosure, it is submitted to be within the scope of the present invention to direct, in an intended and predominant fashion, discrete quantities of heat for the desired purpose of elevating either the yolk or albumen. This further occurs based upon an input parameter to the microwave heat generator, associated with at least one of a size and preexisting temperature of the yolk, to determine the predominate quantity of microwave energy applied thereto.

As previously cited, WO 97/02751 (Purdue Research) teaches a process for pasteurizing in-shell eggs, and by which the application of microwave energy is taught as one possible variant for preheating an egg shell to a predetermined temperature near, but below pasteurization temperature (see page 6, line 30, et seq. in Purdue 97/02751). As previously stated by Applicant,

and in analyzing and applying the 97/02751 reference, the Examiner further stated that heating of the albumen and yolk to different temperatures would inherently occur due to the differences in material make up of the individual egg components.

It is conceded that the effect of applying a consistent heat input across an entire interior volume of an in-shell egg would result in different degrees of heating of the yolk and albumen, and as the Examiner correctly pointing out would result from the differences in the consistency and density between the yolk and albumen. This mere fact however is again respectfully submitted as not rendering obvious the intention to apply a discrete quantity of (microwave) energy intentionally and predominantly directed to the in-shell yolk, followed by a further discrete and predominantly directed quantity of energy to the albumen, in either instance with a minimum of carry-over effect to either the yolk or albumen. Furthermore, it is within the possible scope of the invention that the residual "carry over" effect of heating the albumen while intentionally attempting to heat the yolk and vice versa, could in fact be factored into the discrete quantities of heating energy determined to be applied.

Accordingly, and in view of the above, Applicant respectfully disagrees with the application of the Purdue reference as teaching or suggesting the intention to administer an intended and predominantly directed heating of the egg yolk and albumen. Purdue 97/02751 rather only discloses microwave heating the shell of the egg in an initial preheat operation, this certainly not allowing the user to selectively input energy into the yolk or albumen in a substantially selected fashion.

As previously indicated by Applicant, and in rejecting claims under 35 U.S.C. §103, the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. See *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of

obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the art having the references before him to make the proposed combination or modification. See *In re Litner*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA, 1972). The conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention, see again *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d, 1596, 1598 (Fed. Cir. 1988).

Rejections based on §103 must instead rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. Rather, and when satisfying the burden of showing obviousness of the combination, the Examiner can show some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art which would lead that individual to combine the relevant teachings of the references. *In re Lee*, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). Furthermore, broad conclusory statement regarding the teaching of multiple references, standing alone, are not “evidence”. *In re Dembicza*k, 173 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact. *Dembicza*k, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing *McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Applying the above, Applicant submits that the failure of Purdue to teach or suggest any form of targeted application of microwave energy, such as specifically to each of the in-shell egg yolk and albumen. Accordingly, it does not render the claims inherently obvious to Purdue simply because it teaches microwave preheating of the egg shell.

In further addressing the Examiner's comments on pages 4-5 of the Remarks to the January 18, 2006 Office Action, the argument is that the microwave component in Purdue has the ability to change time and energy constraints to be able to perform the particular strategy steps set forth in the claims. Applicant first disagrees that one of ordinary skill in the art would reasonably be expected to, or capable of, performing predominantly individualized and successive heating of the in-shell yolk and albumen without specific ability or teaching to calibrate and effectively deliver quantums of energy to the yolk and albumen in respective fashion.

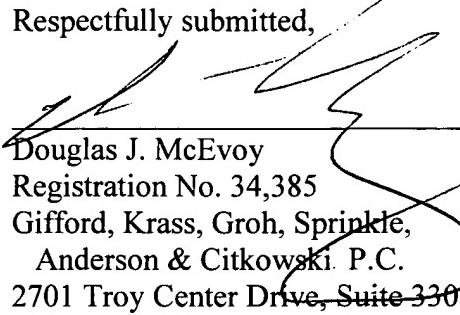
The further recitation of the input parameter intended to modulate the yolk directed energy as a parameter of either or both size or preexisting temperature is also not taught or suggested in Purdue. Furthermore, and as is now referenced in each of new claims 86-97, Applicant has added a method for pasteurizing the in-shell egg according to the strategy steps contained within the system claims and which again is not suggested or taught in Purdue.

Applicant further submits that each of the secondary cited references are unrelated to the microwave pasteurization aspects argued in reference to each amended independent claim, these patentably distinguishing features are likewise submitted to apply to the other cited prior art. Particular reference is made to the egg weighing means set forth in Niederer, the egg washing method of JP 2000/014269, the blemish inspection apparatus of van der Schoot and, finally, the grading machine of Anschutz.

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In view of the above, the claims in the present application are submitted to be allowable and favorable action is requested. Attorney for Applicant may be contacted at (248) 647-6000 with any questions the Examiner may have.

Respectfully submitted,


Douglas J. McEvoy
Registration No. 34,385
Gifford, Krass, Groh, Sprinkle,
Anderson & Citkowski. P.C.
2701 Troy Center Drive, Suite 330
P.O. Box 7021
Troy, MI 48007-7021
(248) 647-6000

Attorney for Applicant

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